APPENDIX A — COMPLAINT DATED AUGUST 12, 1998

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
IN LEXINGTON

NO. 98-334

ROBERT RELFORD, individually and ROBERT RELFORD, FOR AND ON BEHALF OF ALL FORMER, CURRENT, AND FUTURE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT CIVIL SERVICE EMPLOYEES

PLAINTIFFS

vs.

THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

DEFENDANT

COMPLAINT

Comes ROBERT RELFORD, for and on behalf of all former, current, and future Lexington-Fayette Urban County Government Civil Service Employees, [hereinafter "RELFORD"], and for his Complaint against the above-named Defendant, states as follows:

Appendix A

NATURE OF ACTION

1. Plaintiffs seek a judgment declaring that Defendant's "Alcohol and Drug Free Workplace Guidelines and Procedure Handbook," [hereinafter "Handbook"], attached hereto as Exhibit "A," is in direct violation of the United States Constitution's Fourth, Fifth, and Fourteenth Amendments and the corresponding provisions of the Kentucky Constitution. In addition, Plaintiffs seek a judgment declaring that Defendant's actions toward Plaintiff Relford constituted an unlawful search of Plaintiff Relford and an unlawful taking of Plaintiff Relford's property without due process of the law in violation of Plaintiff Relford's Fourth, Fifth, and Fourteenth Amendment rights under the United States Constitution and the corresponding provisions of the Kentucky Constitution. Plaintiffs seek relief pursuant to 42 U.S.C. § 1983.

PARTIES

2. Plaintiff RELFORD resides at 5060 Newtown Pike, Lexington, Kentucky 40511.

3. Defendant, Lexington-Fayette Urban County Government, [hereinafter "LFUCG"], is an urban-county governmental agency pursuant to Kentucky Revised Statues Chapter § 67A, and can be served through Edward W. Gardner, Esq., Department of Law, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.

4. The acts complained of herein took place within the Commonwealth of Kentucky, including Lexington, Fayette County, Kentucky.

SUBJECT MATTER JURISDICTION

5. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, since the subject matter at issue herein involves the violation of a Federal statute and the U.S. Constitution.

FACTUAL BACKGROUND

6. At the time of the acts complained of herein, Plaintiff Relford was an employee of the Defendant, LFUCG.

7. On June 20, 1997, Plaintiff Relford was served by the Defendant with a "Notice of Reasonable Cause" ["Notice"] ordering him to submit immediately to a drug test "for cause" at an Urgent Treatment Center medical testing facility. A copy of said notice is attached hereto as Exhibit "B." This Notice indicated, *inter alia*, that Relford was "to be tested under reasonable cause testing" due to his "recent arrest for 'possession of a controlled substance . . . .' " [Emphasis added.]

8. Relford was never arrested for possession of a controlled substance as alleged in the Notice.

9. Since the Notice contained an inaccurate statement of the charges upon which the LFUCG based its demand for

the test, Plaintiff Relford, through counsel, requested that the Notice be amended to properly reflect the basis for testing.

10. The LFUCG refused to amend the Notice. Based upon the LFUCG's refusal, and on advise of counsel, Plaintiff Relford declined to submit to a test that violated his Civil Rights.

11. Subsection XI.E.1. through XI.E.4. of the Handbook, entitled Reasonable Cause Testing (RCT) states:

> Employees will be tested for drugs or alcohol when reasonable suspicion exists to support a belief that the employee is *under the influence of drugs or alcohol or that the employee's behavior or work performance has been affected by drugs or alcohol . . . A determination will be based upon observation and documentation of:*
>
> a. Detection of an alcoholic substance emitting from the employee's breath. This shall include a detection of a "hang-over" odor.
>
> b. Observation(s) of the employee's speech being unusually slurred, or noticeably different without a proper medical reason being given.
>
> c. Observation(s) of the employee's actions or conduct as being noticeably different

> or impaired and not consistent with normal conduct and without proper explanation.
>
> d. Observation(s) that the employee's appearance, in conjunction with the above, indicates that the employee is impaired.

12. Despite the clear limitations contained in the Reasonable Cause Testing provision of the Handbook, the LFUCG has elected to ignore these Fourth Amendment criteria and has required its employees to undergo illegal searches and seizures in direct contravention of the United States Constitution and the Kentucky Constitution.

13. A Charge requesting Relford's termination was filed with the LFUCG Civil Service Commission, [hereinafter "Commission"], on July 2, 1997.

14. On July 3, 1997, the LFUCG suspended Relford without pay, pending the outcome of the Charge requesting Relford's termination.

15. On October 15, 1997, the Commission entered an Opinion/Order, attached hereto as Exhibit "C", concluding:

> [T]he Government failed to adequately advise Mr. Relford of the grounds for which he was requested to take the drug test; [t]hat the Government may have . . . misled Mr. Relford as to those grounds and the consequences of his failure to take the

> test, by and through the obviously inaccurate or defective "Notification of Reasonable Cause Testing"; [and,] [t]hat the Government's guidelines in regard to "reasonable cause testing" are confusing.

16. Despite these conclusions, the Commission upheld the LFUCG's 30-day suspension of Relford and further ordered Relford to undergo drug counselling and random drug testing based on probable cause.

17. As a result of the oppressive working conditions which these circumstances created, Relford was forced to leave his employment with the LFUCG on January 21, 1998.

18. All former, current and future LFUCG Civil Service Employees, relative to Count I are too numerous to identify and join in the action herein.

19. The claims of all former, current and future LFUCG Civil Service Employees, relative to Count I involve common questions of law and fact.

20. The claims of Relford, relative to Count I are typical of the claims of all former, current and future LFUCG Civil Service Employees.

21. The claims of Relford, relative to Count I are not adverse to, or in conflict with, the interests of any putative class member, and he is able, through undersigned counsel, to adequately and vigorously prosecute the interests of the class.

22. Certification of a class of plaintiffs relative Count I is proper under Federal Rules of Civil Procedure Rule 23(b)(2).

COUNT I

23. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs 1 through 22, above, the same as if set forth at length herein.

24. The Fourth Amendment to the United States Constitution provides that "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..." U.S. Const. Amend. IV. Furthermore, Section 10 of the Kentucky Constitution mandates that "[t]he people shall be secure in their persons, houses, papers, and possessions, from unreasonable search and seizure." Ky. Const. § 10.

25. The LFUCG's Handbook is impermissibly vague, confusing, and fails to provide adequate notice to Plaintiffs regarding the conditions which must exist in order to constitute reasonable cause sufficient to justify a search and seizure of Plaintiffs' person(s).

Handbook when ordering its employees, including Relford, to submit to drug tests under circumstances which do not establish reasonable cause as defined by the Handbook.

27. By failing to follow its written procedure for reasonable cause testing, the LFUCG continuously violates the minimum standards of adequate notice and legal

justification of the U.S. Constitution and the Kentucky Constitution, and thus routinely violates the Plaintiffs' rights to be free of unreasonable searches and seizures.

28. By utilizing an unconstitutionally vague and confusing policy in determinations relative to terminations and/or suspensions from LFUCG Civil Service appointments, the LFUCG deprives Plaintiffs of a proprietary interest without due process of law, in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and the corresponding provisions of the Kentucky Constitution.

29. The conduct of Defendant, as set forth above, constitutes a continuing violation of Plaintiff's Fourth, Fifth, and Fourteenth Amendment rights under the U.S. Constitution and the corresponding provisions of the Kentucky Constitution.

30. As a proximate result of Defendant's unlawful conduct, Plaintiffs are threatened with sufficient irreparable harm to warrant injunctive relief. Plaintiffs are also without a legal remedy for the unlawful actions of the Defendant.

31. As a result of Defendant's actions, Plaintiffs have been, and continue to be, subjected to unreasonable acts in direct violation of their United States Constitutional rights. Plaintiffs are entitled to injunctive relief in the form of a Protective Order violation of their United States Constitutional rights. Plaintiffs are entitled to injunctive relief in the form of a Protective Order against any further testing conducted pursuant to the "Reasonable Cause Testing" provisions of the LFUCG's Handbook, and are entitled to recover their

actual damages sustained as a result, including compensatory damages plus Court costs and reasonable attorneys' fees incurred herein.

32. The above-mentioned acts of the Defendant taken against Plaintiffs were willful, wanton, malicious, and oppressive, and justify the awarding of punitive and exemplary damages.

COUNT II

UNLAWFUL SEARCH AND SEIZURE

33. Plaintiffs repeat and reiterate every allegation contained in paragraphs 1 through 32, above, the same as if set forth at length herein.

34. When ordering Relford to undergo a reasonable cause test without first providing a sufficient basis for the demand, the LFUCG failed to follow proper procedure even as outlined in its own Handbook (a Handbook which was developed to comply with the specific requirements of the Fourth Amendment of the United States Constitution and the corresponding provisions of the Kentucky Constitution).

35. By failing to follow its written procedure for reasonable cause testing, the LFUCG failed to comply with the minimum standards of the Fourth Amendment and the corresponding provisions of the Kentucky Constitution, and therefore violated the Relford's right to be free of unreasonable searches.

36. Relford's rights were further violated when the LFUCG Civil Service Commission upheld a 30-day suspension of Relford and ordered Relford to undergo random drug testing, despite the Commission's clear finding that Relford was justified in refusing to undergo the test.

37. The LFUCG consequently violated Relford's rights by requiring Relford to undergo random drug testing without requiring such testing of all other employees. Said testing was unreasonable in light of the continuing vagueness and confusion of the Handbook, and the failure of the LFUCG to provide Relford legally adequate notice of the precise conditions that constitute reasonable cause sufficient to justify a search and seizure of his person.

38. As a result of Defendant's actions, Relford has been subjected to unreasonable acts in direct violation of his United States and Kentucky Constitutional rights. Relford is entitled to recover his actual damages sustained as a result, including compensatory damages plus Court costs and reasonable attorneys' fees incurred herein.

39. The above-mentioned acts of the Defendant taken against Relford were willful, wanton, malicious, and oppressive, and justify the awarding of punitive and exemplary damages.

Appendix A

COUNT III

FIFTH AND FOURTEENTH AMENDMENT VIOLATIONS

40. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs 1 through 41, above, the same as if set forth at length herein.

41. Relford had a property interest in his governmental employment under the Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Kentucky Constitution. As such, Relford was entitled to due process of law before that property could be taken from him.

42. The LFUCG, by violating the Fourth Amendment and the corresponding provisions of the Kentucky Constitution, and by acting upon the illegal Handbook, improperly and illegally deprived Relford of his rights under the Fifth and Fourteenth Amendment of the United States Constitution and the corresponding provisions of the Kentucky Constitution.

43. At the Civil Service Commission hearing on the Charges requesting Relford's termination, Relford was granted only one hour within which to present his case, while the Defendant was allowed one and one-half hours to defend its actions. Furthermore, Relford was prevented from calling several witnesses who could have testified on his behalf. The actions deprived Relford of the opportunity for a fair and full hearing to which he was entitled, thereby depriving him

of his property without due process of law in violation of the Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Kentucky Constitution.

44. Furthermore, the Defendant's suspension, mandatory drug testing, and ultimate constructive discharge of Relford are a clear violations of Relford's property rights in direct contravention of the Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Kentucky Constitution.

45. As a proximate result of Defendant's unlawful conduct, Relford has suffered and continues to suffer substantial losses in earnings, job experience, and other employee benefits that he would have received absent conduct.

46. As a proximate result of Defendant's unlawful conduct, Relford has suffered and continues to suffer, mental, psychological, and physical stress that he would not have suffered absent the Defendant's conduct.

47. As a result of Defendant's actions, Relford is entitled to recover his actual damages sustained as a result, including compensatory damages and damages for humiliation, embarrassment, personal indignity, and emotional distress, plus his Court costs and reasonable attorneys' fees incurred herein.

48. The above-mentioned acts of the Defendant against Relford were willful, wanton, malicious, and oppressive, and justify the awarding of punitive and exemplary damages.

WHEREFORE, Plaintiffs requests as follows:

1. Trial by jury;

2. Judgment against the above-named Defendant, for actual damages, with interest thereon;

3. Judgment against the above-named Defendant, for general and compensatory damages;

4. Judgment against the above-named Defendant, for punitive damages;

5. Restoration of Relford to his former position of employment with the LFUCG, including back pay from the time of his forced departure until the time of reinstatement;

6. An award of costs and attorneys' fees herein;

7. An Order requiring Defendant to amend its drug policy to comply with the mandatory provisions of the United States Constitution;

8. An injunction preventing Defendant from conducting further "reasonable cause testing" until said drug policy is amended to comply with the United States Constitution and the Kentucky Constitution.

9. Any and all other relief to which Plaintiffs may appear entitled.

Appendix A

MORRIS & MORRIS, P.S.C.

By: /s/ James M. Morris
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217 North Upper Street
P.O. Box 394
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

I have read the foregoing Complaint and the facts stated therein are true and correct to the best of my knowledge and belief.

/s/ Robert D. Relford
ROBERT RELFORD

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

Subscribed and sworn to before me by ROBERT RELFORD on this, the 12th day of August, 1998.

My Commission Expires: 3/15/99

/s/ James M. Morris
NOTARY PUBLIC, KENTUCKY,
STATE AT LARGE

APPENDIX B — PETITION

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
CIVIL BRANCH
1st DIVISION

NO. 97CI2837

ROBERT RELFORD

PETITIONER

v.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
CIVIL SERVICE COMMISSION

RESPONDENT

Serve: Sidney C. Kinkead, Esq., Chairman
LFUCG Civil Service Commission
200 East Main Street
Lexington, Kentucky 40507

PETITION

Comes the Petitioner, ROBERT RELFORD, [hereinafter "RELFORD"], pursuant to Kentucky Revised Statutes § 67A.270, and for his petition against the above-named Respondent, states as follows:

1. The Petitioner is Robert Relford, 5060 Newtown Pike, Lexington, KY 40511.

2. The Respondent is the Lexington-Fayette Urban County Government Civil Service Commission, 200 East Main Street, Lexington, Kentucky 40507.

3. The basis for the appeal is the Civil Service Commission failed to make specific findings of fact, and the findings of fact contained in the final Order are without support of substantial evidence. Furthermore, although three votes are required for upholding the action taken by the LFUCG, only two votes were cast in favor of the disciplinary action.

4. Despite the Commission's clear findings that "the Government failed to adequately advise Mr. Relford of the grounds for which he was requested to take the drug test;" "the Government may have, in fact, misled Mr. Relford as to those grounds and the consequences of his failure to take the test, by and through the obviously inaccurate or defective 'Notification of Reasonable Cause Testing';" and "the Government's guidelines in regard to "reasonable cause testing" are confusing," the Commission still arbitrarily suspended Petitioner for not taking the drug test.

5. The Commission acted arbitrarily and capriciously in dismissing the Petitioner from the Civil Service of the Lexington-Fayette Urban County Government.

6. The Petitioner has exhausted his administrative remedies when the matter was appealed to the Secretary of the civil Service Commission, and a hearing was held on the matter. A copy of the Commission's Findings of Fact and Conclusions is attached hereto as Exhibit A.

WHEREFORE, Petitioner requests as follows:

1. That the Civil Service Commission's Order be reversed;

2. An award of costs and attorneys' fees herein; and

3. Any and all other relief to which Petitioner may appear entitled.

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